

M. MARON 5,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA : STIPULATION AND
:
-v.- : ORDER OF SETTLEMENT
:
DENNIS DOWD, : MARY O'HARA-DOWD
:
: 09 Cr. 217 (CM)
:
Defendant. :
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MARY O'HARA-DOWD, :
:
Petitioner. :
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WHEREAS, on March 11, 2009, DENNIS DOWD (the "defendant") was charged in a two-count Information, 09 Cr. 217 (CM) (the "Information"), with health care fraud, in violation of 18 U.S.C. §§ 1347 and 2 (Count One), and with engaging in monetary transactions in property derived from specified unlawful activity, in violation of 18 U.S.C. §§ 1957 and 2 (Count Two);

WHEREAS, the Information included a forfeiture allegation providing notice that, as a result of the health care offense charged in Count One, the defendant shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense;

WHEREAS, the Information included a forfeiture allegation providing notice that, as a result of the money laundering offense charged in Count Two, the defendant shall forfeit to the United States, pursuant to 18 U.S.C. § 982, all property, real and personal, involved in the money laundering offense and all property traceable to such property;

WHEREAS, on March 11, 2009, the defendant pled guilty to Counts One and Two of the Information pursuant to a plea agreement with the Government;

WHEREAS, under the terms of the plea agreement, the defendant admitted the forfeiture allegations in the Information with respect to Counts One and Two and agreed to forfeit to the United States, pursuant to 18 U.S.C. § 982: (i) a sum of money equal to \$6,100,000 in United States currency, representing the amount of proceeds obtained as a result of the health care offense alleged in Count One, which includes the amount of property involved in the money laundering offense alleged in Count Two (the "Money Judgment"); and (ii) all right, title and interest of the defendant in the following specific properties:

- (1) One Blue 2007 Lexus RX350, bearing Vehicle Identification Number 2T2HK31U47C033899;
- (2) All funds and other property formerly on deposit at Wachovia Securities, LLC, Glen Allen, VA, in JTWROS Account Number 2776-7757/CAP Account Number 8885010864, in the name of Dennis M. Dowd and Mary O'Hara Dowd, and all property traceable thereto;

- (3) All funds and other property formerly on deposit at, and all funds and other property remaining on deposit at, Morgan Stanley, in Account Number 249-096467, in the name of Dennis M. Dowd, and all property traceable thereto;
- (4) All funds and other property formerly on deposit at, and all funds and other property remaining on deposit at, Morgan Stanley, in Account Number 249-096474, in the name of Dennis M. Dowd, Custodian for Ryan Christopher Dowd, and all property traceable thereto;
- (5) All funds and other property formerly on deposit at, and all funds and other property remaining on deposit at, Morgan Stanley, in Account Number 249-097297, in the name of Dennis C. Dowd, and all property traceable thereto (the "Morgan Stanley 297 Account");
- (6) All funds and other property formerly on deposit at, and all funds and other property remaining on deposit at, Pershing LLC, Account Number 5NP-280170, in the name of Dennis M. Dowd, and all property traceable thereto;
- (7) The real property and appurtenances located at 2834 Saint Bart's Square, Vero Beach, Florida 32967;
- (8) The real property and appurtenances located at 72 Freeport Avenue, Point Lookout, New York 11569 (the "Point Lookout Property");

(collectively, the "Specific Properties");

WHEREAS, in the plea agreement, the defendant admitted that the Point Lookout Property and other Specific Properties are forfeitable as property that constitutes or was derived from proceeds obtained as a result of the health care offense alleged in Count One, and as properties involved in the money laundering

offense alleged in Count Two, or property traceable to such property;

WHEREAS, on or about June 16, 2009, the Court entered a "Stipulation and Preliminary Order of Forfeiture as to Specific Properties" (the "First Preliminary Order of Forfeiture"), which (1) imposed a money judgment (the "Money Judgment") against Dowd, in the amount of \$6,100,000, and (2) ordered the forfeiture to the United States of all of his right, title and interest in the Point Lookout Property and the Morgan Stanley 297 Account;

WHEREAS, on or about September 22, 2009, the Court entered a "Second Preliminary Order of Forfeiture as to Specific Properties" (the "Second Preliminary Order of Forfeiture"), forfeiting all of the defendant's right, title and interest in the following:

- (i) Hitachi Deferred Compensation Plan, RPS Plan Number 114651, held in the name of Dennis Dowd at JPMorgan Chase Bank, N.A. (the "Deferred Compensation Plan"); and
- (ii) Hitachi Employee 401(k) Retirement Plan, RPS Plan Number 35970, held in the name of Dennis Dowd at JPMorgan Chase Bank, N.A. (the "401(k) Plan"); and
- (iii) The real property and appurtenances located at 3154 Stoneleigh Court, Yorktown Heights, New York 10598, which is held in the names of Dennis Dowd and Mary Dowd (the "Yorktown Heights Property");
- (iv) An undivided .1869 % interest, held in the names of Dennis Dowd and Mary Dowd, in Unit 39 of the Disney Vacation Club at Walt Disney Resort, a leasehold condominium according to

the Declaration of Condominium thereof as recorded in Official Records Book 4361, Page 2551, Public Records of Orange County, Florida, and all amendments thereto (the "Disney Timeshare");

WHEREAS, in the Second Preliminary Order of Forfeiture, the Court found that the Government had shown, by a preponderance of the evidence, that at least approximately \$168,043 worth of payments that were made on a mortgage on the Yorktown Heights Property are traceable to the proceeds of the offense charged in Count One;

WHEREAS, on or about July 16, 2009, the defendant was sentenced and ordered to pay a forfeiture money judgment in the amount of \$6,100,000;

WHEREAS, Mary O'Hara-Dowd (the "Petitioner") submitted a "Petition For A Hearing to Adjudicate the Validity of Claimant's Interest" (the "Petition"), dated October 23, 2009, asserting an interest in the following:

- (1) the Point Lookout Property;
- (2) the Deferred Compensation Plan;
- (3) the 401(k) Plan;
- (4) the Yorktown Heights Property;
- (5) the Disney Timeshare;

(collectively, the "Subject Property");

WHEREAS, on January 7, 2010, the United States filed an application for a writ of garnishment;

WHEREAS, on January 11, 2010, the Court granted the application for the writ of garnishment;

WHEREAS, in or about March 2010, Petitioner submitted an Objection to Notice of Garnishment, dated March 5, 2010;

WHEREAS, the parties have reached an agreement in these proceedings and wish to settle without resort to further litigation;

WHEREAS, the Government has agreed to request that the Court vacate the Second Preliminary Order of Forfeiture as to the Yorktown Heights Property and to extinguish its *lis pendens* on that property and, in return, Petitioner has agreed to not contest forfeiture and garnishment of, and to withdraw her petition and any all claims to, the following: (1) the Point Lookout Property, (2) the Deferred Compensation Plan, (3) the 401(k) Plan, and (4) the Disney Timeshare;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED that:

1. The United States agrees to execute a Notice Extinguishing Lis Pendancy as to the Yorktown Heights Property.

2. Petitioner agrees to withdraw any and all claims and/or petitions filed by her, or on her behalf, in any administrative or judicial forfeiture proceedings regarding the Point Lookout Property, the Deferred Compensation Plan, the 401(k) Plan and the Disney Timeshare (collectively, the "Released

Assets"), including the "Petition For A Hearing to Adjudicate the Validity of Claimant's Interest," dated October 23, 2009, and her "Objection to Notice of Garnishment," dated March 5, 2010.

3. JPMorgan Retirement Plan Services or Hitachi America Ltd. (collectively, the "Garnishee") shall liquidate and turn over all funds and other assets in the 401(k) Plan to the United States, by check made payable to the Clerk of the Court, and mail said check to the United States District Court, 500 Pearl Street, New York, New York 10007, attn: Cashier.

4. Petitioner is hereby barred from asserting any claim against the United States of America ("USA"), the Department of Justice ("DOJ"), the United States Attorney's Office for the Southern District of New York ("SDNY-USAO"), the Department of Investigation ("DOI"), the Internal Revenue Service ("IRS"), or any agents and employees of the USA, the DOJ, the SDNY-USAO, the DOI, the IRS, and from assisting others in asserting any such claim, in connection with the seizure and/or forfeiture of the Subject Property, including but not limited to any claim that there was no probable cause to seize and hold the Subject Property, that the Petitioner is a prevailing party, or that the Petitioner is entitled to attorney's fees or any award of interest.

5. Upon the Court's endorsement of this Settlement Stipulation, the Second Preliminary Order of Forfeiture is vacated as to the Yorktown Heights Property.

6. Mary O'Hara Dowd's "Petition For A Hearing to Adjudicate the Validity of Claimant's Interest," dated October 23, 2009, is hereby dismissed with prejudice.

7. The signature pages of this stipulation may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Fax copies shall be treated as originals.

8. Petitioner hereby agrees to waive all rights to appeal or otherwise challenge or contest the validity of this Stipulation and Order.

9. This Stipulation and Order shall in no way constitute any reflection upon the merits of the claims and defenses asserted respectively by the Plaintiff and the Petitioner.

10. Each party shall bear its own costs and attorneys fees.

11. The Clerk of the Court shall forward four certified copies of this Order to Assistant United States Attorney, Anna E. Arreola, One St. Andrew's Plaza, New York, New York 10007.

Dated: New York, New York
April __, 2010

Agreed and consented to:

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By: Anna E. Arreola / Sdk
ANNA E. ARREOLA
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007

April 29, 2010
DATE

KATHLEEN ZEBROWSKI
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
(212) 637-2218/2710

MARY O'HARA DOWD, Petitioner

By: Mary O'Hara - Dowd
MARY O'HARA DOWD

April 23, 2010
DATE

By: W. H. Gravett
WILLEM H. GRAVETT, ESQ.
ATTORNEY FOR MARY O'HARA-DOWD
Gravett & Gravett
100 South Bedford Road, Ste. 340
Mount Kisco, NY 10549

April 23, 2010
DATE

SO ORDERED:

Colleen McMahon
HONORABLE COLLEEN McMAHON
UNITED STATES DISTRICT JUDGE

4-30-2010